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By order of the Court, Pro Tem Judge David A. Wiseman

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CO-TRUSTEES FOR PB MANGLONA FAMILY TRUST,)	CIVIL ACTION NO. 15-0082
)	
)	
Plaintiffs,)	ORDER GRANTING DEFENDANTS'
v.)	MOTION FOR JUDGMENT ON
)	PARTIAL FINDINGS
CO-ADMINISTRATORS OF THE ESTATE OF BERNADITA A. MANGLONA,)	
)	
)	
Defendants.)	

I. INTRODUCTION

THIS MATTER came before the Court on December 5, 2016, at 8:30 a.m. in Courtroom 220A, for a bench trial.¹ Attorney Pamela Brown represented Plaintiffs Co-Trustees for PB Manglona Family Trust. Attorney Samuel I. Mok represented Defendants Co-Administrators of the Estate of Bernadita A. Manglona.

As a threshold matter, the Court disclosed its tentative ruling that Plaintiffs' second motion for summary judgment was **DENIED** because the arguments advanced were almost word for word the same as those previously rejected by the Court in its previous order. *See Co-Trustees For PB Manglona Family Trust v. Co-Administrators of the Estate of Bernadita A. Manglona*, Civ. No. 15-0082 (NMI Super. Ct. Dec. 18, 2015) (Order Denying Plaintiffs' Motion for Summary Judgment).

¹ Due to witness scheduling issues some witness testimony was taken on December 5, 2016, but the vast majority of the bench trial took place on December 7, 2016.

1 After further review, the Court deems it appropriate to definitively **DENY** Plaintiffs’ second
2 summary judgment motion on the same grounds as the Court’s first denial of summary judgment.

3 Additionally, the Court **DENIES** Plaintiffs’ motion to strike Defendants’ opposition to
4 Plaintiffs’ motion for summary judgment. The Court has repeatedly indicated, in this case as well as
5 other related cases, that the Court is not going to entertain motions based on minor technical
6 shortcomings due to the significant and complex issues that are before the Court. *See generally In*
7 *re Estate of Bernadita A. Manglona*, Civ. No. 13-0195 (NMI Super. Ct. Mar. 3, 2015) (Orders
8 Regarding Trust Validity and Alleged Trust Revocation at 3) (“Trustees filed a motion to strike Co-
9 Administrators’ opposition brief in this matter on grounds of untimeliness . . . The Court struggles
10 to find how such minor technical shortcomings warrant the full attention of the Court . . .”).

11 At this time, the Court is tasked with ruling on Defendants’ motion for judgment on partial
12 findings pursuant to NMI R. CIV. P. 52(c). After reviewing the relevant submissions of the parties,
13 the testimony and exhibits presented at trial, and the applicable law the Court **GRANTS**
14 Defendants’ motion; Plaintiffs have failed to overcome the marital presumption as to 3496 T.D. 348
15 (“Apanon”), 3144 T.D. 397 (“Tatgua”), and Lot 551 R01 (“As Nieves”).

16 **II. LEGAL STANDARD**

17 During a bench trial, if a party has been fully heard on an issue and the party’s claim or
18 defense cannot be maintained then NMI R. CIV. P. 52(c) provides a mechanism whereby an adverse
19 party may move to have the court enter judgment on the claim or defense. Specifically, NMI R. CIV.
20 P. 52(c) states:

21 If during a trial without a jury a party has been fully heard on an issue and the court
22 finds against the party on that issue, the court may enter judgment as a matter of law
23 against that party with respect for a claim or defense that cannot under the
24 controlling law be maintained or defeated without a favorable finding on that issue,
or the court may decline to render any judgment until the close of all the evidence.
Such a judgment shall be supported by findings of fact and conclusions of law as
required by subdivision (a) of this rule.

1 Judgment on partial findings permits the Court to streamline bench trials by allowing judges
2 to make findings of fact adverse to the plaintiff including credibility determinations after having
3 heard all of the evidence without the need for the defense to put on a case. *Wsol v. Fiduciary Mgmt.*
4 *Assocs., Inc.*, 266 F.3d 654, 656 (7th Cir. 2001).² On a NMI R. Civ. P. 52(c) motion, the Court is
5 permitted to weigh the evidence and “decide for itself where the preponderance lies.” *Neopost*
6 *Industrie B.V. v. PFE Int’l, Inc.*, 403 F. Supp. 2d 669, 675 (N.D. Ill. 2005).

7 III. FINDINGS OF FACT

8 After reviewing the evidence as well as the credibility and weight of the witness testimony,
9 the Court **FINDS** the following facts were established by a preponderance of the evidence, but not
10 clearly and convincingly:

- 11 1. The Apanon, Tatgua, and As Nieves properties were given via deeds of gift to Prudencio T.
12 Manglona by his father, Prudencio M. Manglona. These deeds of gift were delivered to
13 Prudencio T. Manglona during his marriage to Bernadita A. Manglona.
- 14 2. On February 21, 1978, Prudencio M. Manglona executed a deed of gift for all of his
15 properties on Rota naming his three sons, Antonio T. Manglona, Prudencio T. Manglona
16 and Benjamin T. Manglona as beneficiaries.

17 A. The Apanon Property.

- 18 3. On July 8, 1959, Prudencio M. Manglona filed his claim to a parcel of land in the Pinigao
19 area of Rota with the Trust Territory of the Pacific Land Commission, Rota District (“Land
20 Commission”), stating that he acquired the Pinigao property from the Japanese government
21 through a land exchange and that he wanted to exchange that property for his former
22 property located in Fatguan. Prudencio M. Manglona testified under oath stating that he had
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24 ² As NMI R. Civ. P. 52(c) is patterned after FED. R. Civ. P. 52(c) the Court looks to the federal interpretation for
guidance. See *Markoff v. Lizama*, 2016 MP 7 footnote 2 (citing *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60).

1 lost his records of ownership for the parcel during World War II (“WWII”). The Land
2 Commission issued Title Determination 384 in regards to the Pinigao parcel on July 9, 1959
3 that named Prudencio M. Manglona as the owner. A land exchange agreement was executed
4 on May 4, 1981 to memorialize the July 24, 1959 land exchange agreement between the
5 Government of the Trust Territory and Prudencio M. Manglona which exchanged the
6 Pinigao parcel for the Apanon parcel.

- 7 4. On August 15, 1988, Prudencio M. Manglona executed a deed of gift for the Apanon parcel
8 in favor of his three sons, Antonio T. Manglona, Prudencio T. Manglona, and Benjamin T.
9 Manglona.

10 **B. The Tatgua Property.**

- 11 5. On July 8, 1959, Prudencio M. Manglona filed his claim to his pre-WWII properties with
12 the Land Commission. Prudencio M. Manglona testified under oath stating that he had lost
13 his records of ownership for the parcel during WWII. On July 13, 1959, the Land
14 Commission issued Title Determination 397 for the Tatgua parcel on Rota in favor of
15 Prudencio M. Manglona. On June 26, 1987, the Senior Land Commissioner executed a
16 certificate of title naming Prudencio M. Manglona as the owner of the Tatgua parcel.
- 17 6. On August 15, 1988, Prudencio M. Manglona executed a deed of gift in favor of his three
18 sons, Antonio T. Manglona, Prudencio T. Manglona, and Benjamin T. Manglona for the
19 Tatgua parcel.

20 **C. The As Nieves Property.**

- 21 7. The As Nieves parcel was acquired by Prudencio M. Manglona after a series of
22 governmental takings that moved his ownership from its original location in the Panga area
23 of Rota to Sakaya then to Tatgua and ultimately to As Nieves.

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- 1 8. On January 3, 1989, Prudencio M. Manglona executed a deed of gift transferring the As
2 Nieves property to one of his sons, Prudencio T. Manglona.
- 3 9. Each of these three parcels was given via deeds of gift to Prudencio T. Manglona by his
4 father, Prudencio M. Manglona.
- 5 10. These deeds of gift were delivered to Prudencio T. Manglona during his marriage to
6 Bernadita A. Manglona.

7 IV. CONCLUSIONS OF LAW

8 The sole issue before the Court is whether Plaintiffs can overcome the marital presumption
9 by establishing, clearly and convincingly, that the three parcels at issue are ancestors' land for
10 purposes of 8 CMC § 2107 and 8 CMC § 2902. The three parcels at issue, Apanon, Tatgua, and As
11 Nieves, are presumed marital property because they have already been classified as marital
12 property; thus, it is Plaintiffs' burden to rebut the presumption by clear and convincing evidence. *In*
13 *re Estate of Bernadita A. Manglona*, Civ. No. 13-0195 (NMI Super. Ct. Mar. 3, 2015) (Orders
14 Regarding Trust Validity and Alleged Trust Revocation at 7) (ruling that the properties at issue are
15 marital property).

16 A. Legal Standard Governing the Marital Presumption and Ancestors' Land.

17 In *Reyes v. Reyes*, 2004 MP 1 ¶ 36, the NMI Supreme Court articulated the standard
18 applicable to this case:

19 It is well established that all property acquired during marriage is presumed to be
20 marital property and the party seeking to exclude that property from equal division
21 on divorce has the burden of overcoming this presumption *Ada v. Sablan*, 1
22 NMI 415, 428 (1990). The presumption is nearly conclusive and may only be
23 overcome by clear and convincing evidence with any doubts to be resolved in favor
24 of a finding of marital property. *Beam v. Beam*, 569 P.2d 719, 725 (Wash. Ct. App.
1977); *Kennedy v. Kennedy*, 379 P.2d 966, 969 (Ariz. 1963); *Porter v. Porter*, 195
P.2d 132, 136 (Ariz. 1948). Self-serving statements are not enough to overcome the
presumption towards classifying property as marital. *In re Marriage of Janovich*,
632 P.2d 889, 891 (Wash. Ct. App. 1981); *Thaxton v. Thaxton*, 405 P.2d 932, 934

1 (N.M. 1965); *Carlson v. McCall*, 271 P.2d 1002 (Nev. 1954); *Shanafelt v. Holloman*,
2 296 P.2d 752 (N.M. 1956).

3 A party can overcome the marital presumption by establishing that the property[s] at issue is
4 ancestors' land. 8 CMC § 2107 defines ancestors' land as: "land acquired by a person in any
5 manner from one or more of his Chamorro ancestors of Northern Marianas descent, whether by
6 inheritance, gift, will, or family agreement." Under 8 CMC § 2902 "[a]ncestors' land passes in
7 intestacy in the following manner . . . [i]f there is no surviving spouse, the surviving issue of the
8 decedent obtain all of the properties by representation." The NMI Supreme Court has generally
9 recognized that in order to qualify as ancestors' land the property[s] must be traced back to pre-
10 WWII times. *See generally In re Dela Cruz*, 2 NMI 1, 13 (1991) (highlighting the practice of
11 tracing land ownership). Yet, a firm test as to who qualifies as an ancestor for probate purposes has
12 not been articulated in the Commonwealth. Due to the lack of clear authority, the Court takes the
13 position that to overcome the marital presumption a party claiming ancestors' land must clearly and
14 convincingly tie the properties at issue pre-WWII. Further, if there is any doubt as to whether the
15 land in question is ancestors' land or not the Court must resolve the doubt in favor of classifying the
16 property as marital.

17 **B. Discussion.**

18 In this case, Plaintiffs contend that they can overcome the marital presumption because the
19 three parcels at issue are ancestors' land. Plaintiffs argue that they have presented the Court with
20 sufficient testimony and evidence to show clearly and convincingly that the properties at issue are
21 ancestors' land, which should be classified as individual property. Defendants respond that
22 judgment on partial findings is proper in this case because the testimony and evidence presented at
23 trial cannot overcome the marital presumption since there is doubt as to the reliability of the
24 exhibits and testimony. Moreover, Defendants argue that the witnesses and exhibits presented at

1 trial did not provide the Court with “an accurate and complete tracing” making a judgment in their
2 favor under NMI R. Civ. P. 52(c) appropriate. *See Co-Trustees For PB Manglona Family Trust v.*
3 *Co-Administrators of the Estate of Bernadita A. Manglona*, Civ. No. 15-0082 (NMI Super. Ct. Dec.
4 18, 2015) (Order Denying Plaintiffs’ Motion for Summary Judgment at 4) (articulating that
5 Plaintiffs have a heavy burden to clearly trace the history of the properties in order to overcome the
6 marital presumption).

7 At this time, the Court **GRANTS** Defendants’ motion for judgment on partial findings. In
8 reaching its decision the Court weighed Plaintiffs’ witness testimony and exhibits as follows:

9 1. Witness Testimony.

10 In their case in chief, Plaintiffs called 5 witnesses: Roman Mendiola, Serena Kaipat, John A.
11 Manglona, Prudencio A. Manglona, Jr., and Paul A. Manglona. Roman Mendiola, Serena Kaipat,
12 and John A. Manglona were called to authenticate Plaintiffs’ exhibits so that they could be admitted
13 into evidence. Prudencio A. Manglona, Jr. was called to discuss his personal relationship with his
14 grandfather Prudencio M. Manglona in order to show the link between the family and the
15 properties. Paul A. Manglona was called to establish the requisite foundation to admit Plaintiffs’
16 four documentary exhibits as well as to testify about his personal experiences relating to the parcels
17 in question.

18 The vast majority of the testimony in this case went to admitting Plaintiffs’ exhibits because
19 it is Plaintiffs’ contention that the four exhibits clearly establish the history of the three parcels.
20 Moreover, Plaintiffs’ argue that the testimony and particularly the exhibits show that the parcels
21 have been owned by the Manglona family since before WWII, i.e. convincingly establishing that
22 the parcels should qualify as ancestors’ land, thereby overcoming the marital presumption. The
23 Court finds that the only persuasive witness testimony presented went to authenticating exhibits.

1 The testimony presented outside of the authentication area was conclusory and unpersuasive. As
2 such, the Court turns to analyzing each of Plaintiffs' exhibits.

3 2. Plaintiffs' Exhibit A.

4 Plaintiffs' Exhibit A is a two page excerpt of the PB Manglona Family Trust Agreement. On
5 the issue of ancestors' land this exhibit appears to have limited to no value. Plaintiffs' burden is to
6 tie the three parcels at issue pre-WWII to carry their clear and convincing burden and Plaintiffs'
7 Exhibit A does not speak at all to the pre-WWII question.

8 3. Plaintiffs' Exhibit B.

9 Plaintiffs' Exhibit B consists of ten pages, which was taken from the public land records.
10 Ms. Kaipat a supervisor for the research section of the Lands & Survey Division of the CNMI
11 Department of Public Lands & Natural Resources indicated that Exhibit B was compiled from the
12 land records kept by her department and division. Exhibit B outlines that Prudencio M. Manglona
13 filed a claim with the Land Commission covering the Apanon and Tatgua properties.

14 While the Court finds that Exhibit B does establish that Prudencio M. Manglona received
15 title determinations in his favor as to the Apanon and Tatgua properties, Exhibit B lacks necessary
16 context and foundation to clearly and conclusively establish that the parcels are ancestors' land. The
17 Court is not convinced that Exhibit B provides the whole story because it consists of random pages
18 taken from the Commonwealth's land records. No testimony from an expert was elicited to discuss
19 the specifics of the title determinations for the Apanon and Tatgua properties. If the standard was a
20 mere preponderance the Court would be inclined to rule in Plaintiffs' favor. However, as
21 emphatically stated by the NMI Supreme Court in *Reyes* the Court is required to resolve doubt in
22 favor the marital presumption; Plaintiffs must establish their claim by clear and convincing
23 evidence. 2004 MP at ¶ 36. The Court questions the validity and accuracy of Exhibit B because
24 Plaintiffs failed to lay the proper foundation for authenticating and admitting Exhibit B by

1 neglecting to call an appropriate government official and/or expert who could testify as to the
2 specifics of the title determinations for the Apanon property and the Tatgua property.

3 Moreover, the Court has some doubt as to the degree of weight that should be afforded to
4 Exhibit B because it is random pages that have been compiled, but no testimony or foundation was
5 laid to contextualize the records. For example, page 6 of Exhibit B contains sworn testimony of
6 Prudencio M. Manglona to the Land Commission that he lost his deeds to his properties during
7 WWII. Yet, page 6 makes no mention of the specific properties and more importantly there was no
8 testimony that page 6 was an attachment to the title determinations for the Apanon property and the
9 Tatgua property. Essentially, to come to the conclusion that page 6 relates to the rest of Exhibit B
10 requires the Court to make a series of small inferences, i.e. read in between the lines to see the
11 connection between all the documents. Here, the Court has some doubt as to whether Exhibit B
12 unequivocally establishes that the Apanon property and Tatgua property are ancestors' land and
13 where there is doubt the Court must come down in favor of the marital presumption. *See Reyes,*
14 *2004 MP at ¶ 36.* Exhibit B and the testimony relating to it do not provide the Court with enough to
15 make a definitive ruling that the marital presumption is overcome. It is Plaintiffs' burden to clearly
16 and convincingly demonstrate that the Apanon and Tatgua properties are ancestors' land and
17 Exhibit B goes some of the way towards meeting that burden, but not all of the way.³

18 4. Plaintiffs' Exhibit C.

19 Plaintiffs' Exhibit C is a deed of gift for the Apanon property and the Tatgua property, dated
20 August 15, 1988, from Prudencio M. Manglona to his three sons as beneficiaries. Exhibit C is of
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22 ³ The Court reiterates its disappointment that Plaintiffs did not call an expert to explore the contours of ancestors' land
23 as well as testify to Plaintiffs' exhibits. The Court made clear in its denial of summary judgment that in order for
24 Plaintiffs to carry their clear and convincing burden they needed to clearly articulate to the Court the history of the three
parcels. *See Co-Trustees For PB Manglona Family Trust v. Co-Administrators of the Estate of Bernadita A. Manglona,*
Civ. No. 15-0082 (NMI Super. Ct. Dec. 18, 2015) (Order Denying Plaintiffs' Motion for Summary Judgment at 4). An
expert would have gone a long way towards laying the foundation for the exhibits, which would have allowed the Court
to afford greater weight to them.

1 limited value to the issue at hand because it does not help to tie the parcels to the Manglona family
2 pre-WWII. The deed of gift does help to establish that there has been a chain of ownership going
3 from Prudencio M. Manglona to Prudencio T. Manglona, which is secondary to first establishing
4 that the properties can be tied pre-WWII.

5 5. Plaintiffs' Exhibit D.

6 Plaintiffs' Exhibit D is a deed of gift for the As Nieves property, dated January 3, 1988,
7 transferring the property from Prudencio M. Manglona to Prudencio T. Manglona. Exhibit D also
8 includes a land exchange document from the Marianas Public Land Corporation relating to the As
9 Nieves property. Neither the deed of gift nor the land exchange document helps to tie the As Nieves
10 property pre-WWII. The documents show that the As Nieves property has belonged to the
11 Manglona family for some time and that Prudencio M. Manglona owned the property in the 1960s.
12 However, the Court is not convinced that Exhibit D establishes by clear and convincing evidence
13 that the ownership of the As Nieves property or its predecessor parcels can be tied pre-WWII.

14 **V. CONCLUSION**

15 In sum, after reviewing the witness testimony and exhibits presented by Plaintiffs the Court
16 is not convinced that they can carry their heavy burden. While the Court finds that Plaintiffs can
17 carry a preponderance burden, the Court is of the position that at trial Plaintiffs failed to lay enough
18 of a foundation for its four main exhibits to meet their clear and convincing burden. At trial, the
19 testimony presented was barely sufficient to admit the exhibits into evidence. The lack of
20 foundation limits the weight the Court can place on the exhibits. The Court has some doubts as to
21 whether the exhibits accurately reflect the state of the original land records and has doubts about the
22 order of the documents and their completeness. Further, the Court found the vast majority of the
23 witness testimony falling outside of the authentication area to be quiet conclusory and unpersuasive.
24 The NMI Supreme Court has unequivocally stated that when there is doubt as to whether a parcel[s]

1 should be marital or individual the Court must come down in favor of the marital presumption. *See*
2 *Reyes*, 2004 MP at ¶ 36. Here, the Court has doubts and while it understands the need to protect
3 ancestors' land the Court must resolve its doubts in favor of the marital presumption.

4 For the foregoing reasons, the Court **GRANTS** Defendants' motion for judgment on partial
5 findings; Plaintiffs failed to carry their clear and convincing burden to overcome the marital
6 presumption as to the Apanon, Tatgua, and As Nieves properties. Finally, the Court **ORDERS** the
7 parties to submit, on or before **March 13, 2017**, their position as to the procedural posture of the
8 Bernadita A. Manglona probate (Civ. No. 13-0195) and the Prudencio T. Manglona probate (Civ.
9 No. 16-0076), which are pending before the Court. The parties should also suggest possible
10 hearings and/or motions that may be necessary to expeditiously move this litigation to its eventual
11 conclusion.

12 **IT IS SO ORDERED** this 2nd day of March, 2017.

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/s/ _____
DAVID A. WISEMAN
Judge Pro Tempore